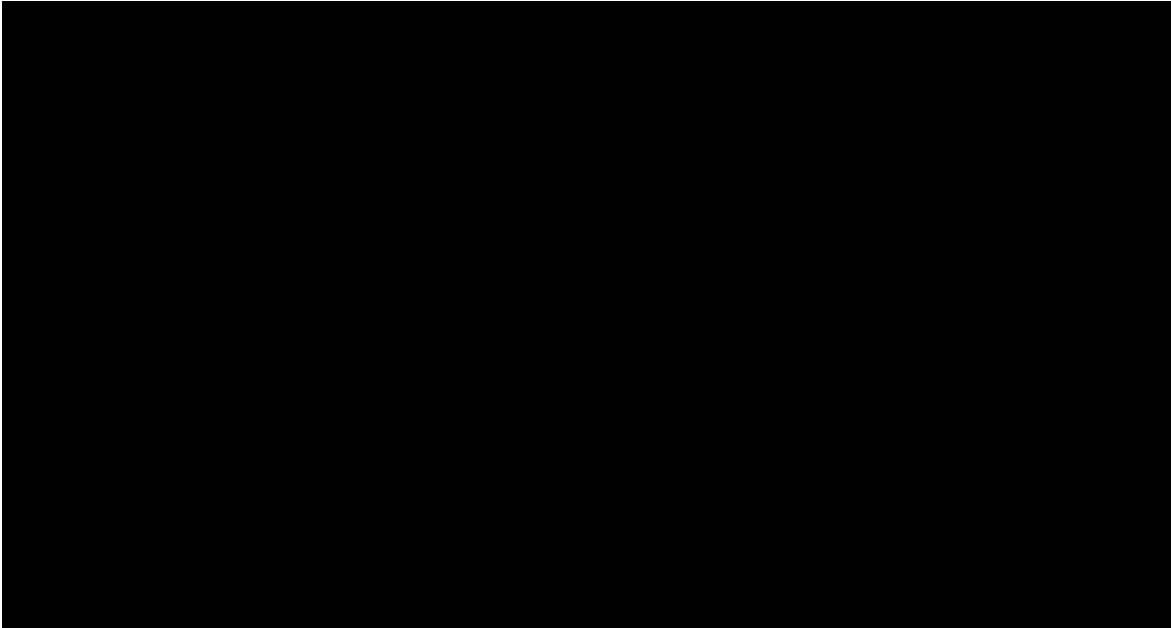


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7. Voir Dire & *Batson-Wheeler*
- a. Proper to voir dire on defendant's gang membership. *United States v. Wright* (August 4, 2008, 8th Circuit) 536 Fed.3d 819
 - b. Proper to voir dire on gang affiliation. *People v. Romero* (2008) 44 Cal.4th 386
 - c. *Batson-Wheeler* challenge properly denied in a gang case when prosecutor challenged because juror with substantial exposure to gangs and who did not believe in the death penalty for drive-by shootings (in a drive-by shooting case), or second juror who grew up in a gang neighborhood and had several Bloods as friends. *People v. Watson* (2008) 43 Cal.4th 652
 - d. *Batson-Wheeler* challenge properly denied in a gang case when prosecutor challenged because juror's brother was murdered by gang members. *People v. Lenix* (2008) 44 Cal.4th 602
 - e. Prosecutor's response that she could not remember why she challenged a juror was insufficient to satisfy *Batson* error regarding gender discrimination. *Yee v. Duncan* (2006, 9th Cir.) 463 Fed.3d 893
 - f. ~~Peremptory challenge properly used by the prosecution for stated reason of religious employment where African American juror was a jail chaplain who came in contact with gang members in jail. Trial court erred by not requesting explanation of all other challenges after finding a *prima facie* case. *People v. Robinson* (2004) 116 Cal.App.4th 1302 REVIEW GRANTED~~
 - g. Latino gang member on trial for murder of a rival gang member established by an *inference* an initial case of discrimination where the prosecutor used peremptory challenges on four of seven Hispanic jurors, and two of two African-American jurors. *Fernandez v. Roe* (9th Circuit, 2002) 286 Fed.3d 1073

- h. In a prosecution for murder in a gang-related shooting, a statement by the prosecutor during voir dire concerning "a tremendous gang problem in Los Angeles County," was not misconduct in context. The trial court admonished the jury that this was not what defendant was charged with, and a jury questionnaire had asked numerous questions concerning gangs. Moreover, defense counsel, before the prosecutor made the remark, had commented about publicized shootings and killings of innocent people with reference to a "gang type situation," and represented that defendant might be a member of a gang. *People v. Franco* (1994) 24 Cal.App.4th 1528
- i. In a prosecution for murder in a gang-related shooting, the prosecutor did not commit misconduct by stating that he, the prosecutor, worked with the District Attorney's Hardcore Gang Division. *People v. Franco* (1994) 24 Cal.App.4th 1528

